



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1097]

RIN 1625-AA11

Regulated Navigation Area; Memorial Bridge Construction,
Piscataqua River, Portsmouth, NH

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The United States Coast Guard is establishing a regulated navigation area (RNA) on the navigable waters of the Piscataqua River under and surrounding the Memorial Bridge between Portsmouth, NH and Kittery, ME. This temporary interim rule is necessary to provide for the safety of life on the navigable waters during bridge demolition and replacement construction operations. This rule implements certain safety measures, including speed restrictions and the temporary suspension of vessel traffic during construction operations that could be hazardous to nearby vessels.

DATES: This rule is effective in the CFR from [INSERT DATE OF PUBLICATION] through December 31, 2013. This rule is

effective with actual notice for purposes of enforcement from December 22, 2011 through December 31, 2013. Public comments will be accepted and reviewed by the Coast Guard through December 31, 2013.

ADDRESSES: You may submit comments identified by docket number USCG-2011-1097 using any one of the following methods:

(1) Federal e-Rulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-1097 and are available online by going to

<http://www.regulations.gov>, inserting USCG-2011-1097 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Junior Grade Terence Leahy of the Waterways Management Division, U.S. Coast Guard Sector Northern New England; telephone 207-767-0398, e-mail Terence.O.Leahy@uscg.mil or Lieutenant Junior Grade Isaac Slavitt of the Waterways Management Division, U.S. Coast Guard First District, e-mail Isaac.M.Slavitt@uscg.mil; telephone 617-223-8385. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal

information you have provided.

As this interim rule will be in effect before the end of the comment period, the Coast Guard will evaluate and revise this rule as necessary to address significant public comments.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-1097), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to

<http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2011-1097" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2011-1097" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday

through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting in connection with the public comment period for this interim rule. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Although it was not held specifically to solicit public comments on this interim rule and was not announced in the **Federal Register**, the New Hampshire Department of Transportation (NHDOT) held a public waterway user meeting

on November 29, 2011, at the Portsmouth, NH City Hall Building where waterway closures and bridge demolition plans were discussed. No comments or concerns were noted during that meeting that would impact the drafting of this rule.

Regulatory Information

The Coast Guard is issuing this interim rule without prior Federal Register notice pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of the public during demolition of the existing Memorial Bridge and subsequent replacement, and it would be contrary to the public interest to delay both demolition and construction.

The need for waterway closures was not brought to the attention of the Coast Guard until November 13, 2011 when the New Hampshire Department of Transportation (NHDOT) requested a complete waterway closure for a 3-day period

beginning January 30, 2012. It is impracticable to issue an NPRM and take public comment before January 2012, when the bridge construction that necessitates creation of a regulated navigation area (RNA) is scheduled to begin, and when the bridge is at risk of immediate failure. Following the conclusion of a lengthy bridge study, NHDOT determined that it was immediately necessary to replace the existing Memorial Bridge due to concerns that the existing structure may suffer a catastrophic failure. A bridge failure could inhibit commercial vessels from reaching facilities upstream on the Piscataqua River should the center lift span become stuck in the down position, blocking the main navigation channel. This would have a significant negative economic impact.

Additionally, any delay or cancellation of the ongoing bridge construction plans would be contrary to public interest as the bridge's failure could cause regionally significant economic, environmental, and safety impacts. The Coast Guard has determined that the prompt remediation of the existing structure will mitigate the threat of a possible catastrophic failure.

Once the Coast Guard received notification of these plans on November 13, 2011 by NHDOT, and established the need for waterway closures and speed restrictions for

vessel traffic, it was necessary for the Coast Guard to move quickly to protect public safety by safeguarding both the mariners and construction workers during the bridge's demolition and construction. The dynamic nature of the construction process and multitude of construction vessels necessitates that all mariners navigate at a safe speed within the RNA in accordance with Rule 6 of the Inland Navigation Rules, as the barge and construction equipment configuration may change on a daily basis. In order to address any further public concerns, this rule is available for public comment until December 31, 2013. The Coast Guard will publish an amended rule if necessary to address public concerns.

For the reasons discussed, delaying the project is contrary to the public interest, and notice and comment period are impracticable. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of

safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this interim rule is to ensure the safe transit of vessels in the area, and to protect all persons, vessels, and the marine environment during demolition and reconstruction operations for the duration of the Memorial Bridge construction, from January 30, 2012 through December 31, 2013.

Discussion of Rule

Due to unanticipated structural failure of the current Memorial Bridge, plans were put in place to demolish the existing bridge structure as quickly as possible and build a new bridge in the current location. The construction of the Memorial Bridge involves large machinery and construction vessel operations above and in the navigable waters of the Piscataqua River. The ongoing operations are, by their nature, hazardous and pose risks both to recreational and commercial traffic as well as the construction crew. In order to mitigate the inherent risks involved in the construction, it is necessary to control vessel movement through the area.

Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. In order to

minimize such unexpected or uncontrolled movement of water, the RNA will limit vessel speed and wake of all vessels operating in the vicinity of the bridge construction zone. This will be achieved by enforcing a five (5) knots speed limit and "NO WAKE" zone in the vicinity of the construction as well as providing a means to suspend all vessel traffic for emergent situations that pose imminent threat to waterway users in the area. The RNA will also protect vessels desiring to transit the area by ensuring that vessels are only permitted to transit when it is safe to do so.

The Coast Guard has discussed this project at length with the NHDOT to identify if the project can be completed without channel closures and, if possible, what impact that would have on the project timeline. Through these discussions, it became clear that while the majority of construction activities during the span of this project would not require waterway closures, there are certain tasks that can only be completed in the channel and will require closing the waterway. At present, NHDOT has not submitted a complete plan for waterway closures due to the expeditious manner that promulgated drafting this regulated navigation area.

On a case-by-case basis, depending on the construction

schedule, NHDOT may request a waterway closure on various dates from January 30, 2012 through December 31, 2013. As discussed below, NHDOT will notify the Coast Guard of planned activities as soon as possible.

The COTP Sector Northern New England will cause notice of enforcement, suspension of enforcement, or closure of this regulated navigation area to be made by all appropriate means to ensure the widest distribution among the affected segments of the public. Such means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. In addition, the COTP maintains a telephone line that is staffed 24 hours a day, seven days a week. The public can obtain information concerning enforcement of the regulated navigation area by contacting Coast Guard Sector Northern New England Command Center at (207) 767-0303.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning

and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be minimal because this regulated navigation area requires vessels to reduce speed through 600 yards of the Piscataqua River, therefore causing only a minimal delay to a vessel's transit. In addition, periods when the regulated navigation area is closed to all traffic are expected to be short in duration, and we expect to give advance notice of such closures.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on

substantial number of small entities. This rule will affect the following entities some of which may be small entities: The owners or operators of marinas, charter fishing vessels, commercial fishing vessels, facilities servicing deep draft vessels, tugboat operators, and recreational vessels who intend to transit in those portions of the Piscataqua River during the effective period. Alternatively, smaller vessel traffic can transit to the north of Badgers Island and through the backchannel at Seavey Island to avoid any delays caused by closures to the waterway around the Memorial Bridge. In addition, periods when the regulated navigation area is closed to all traffic are expected to be short in duration, and we expect to give advance notice of such closures.

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: it requires vessels to reduce speed through 600 yards of the Piscataqua River, therefore causing only a minimal delay to a vessel's transit. Many parties that have the potential to be affected have been involved in the discussions and have made plans to work around the closure times. We will use various appropriate means to inform the public before, during, and at the conclusion of any RNA enforcement period.

The RNA will apply to the width of the Piscataqua River within a 300 yard radius of a position specified in the regulatory text, under and surrounding the Memorial Bridge. During full closures to traffic under the Memorial Bridge, vessels may be allowed to pass through the regulated area with the permission of the COTP.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of

materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of an RNA. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES. Any comments received concerning environmental impacts will be considered and changes made to the environmental analysis checklist and categorical exclusion determination

as appropriate.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-1097 to read as follows:

§165.T01-1097 Regulated Navigation Area; Memorial Bridge Construction, Piscataqua River, Portsmouth, NH

(a) Location. The following area is a Regulated Navigation Area (RNA): All navigable waters, surface to bottom, on the Piscataqua River within a 300 yard radius of position 43°04'46"N, 70°45'10"W in the vicinity of the Memorial Bridge construction zone between Portsmouth, NH and Badgers Island in Kittery, ME.

(b) Regulations.

(1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply within the RNA, and in addition:

(2) In accordance with the general regulations, entry into or movement within this zone, during periods of enforcement, is prohibited unless authorized by Captain of the Port (COTP) Sector Northern New England.

(3) A speed limit of five (5) knots will be in effect within the regulated area. All vessels must proceed through the area with caution and operate in such a manner as to produce no wake.

(4) Vessels must comply with all directions given to them by the COTP Sector Northern New England or his on-scene representative. The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel; New Hampshire State Police, Maine State Police, or other designated craft; or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(5) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(6) All other relevant regulations, including but not limited to the Rules of the Road (33 CFR Subchapter E, Inland Navigational Rules) remain in effect within the regulated area and should be strictly followed at all times.

(c) Enforcement. This regulated navigation area is enforceable 24 hours a day from December 22, 2011 until December 31, 2013.

(1) Notice of suspension of enforcement: If enforcement is suspended, the COTP will cause a notice of the suspension of enforcement by all appropriate means to be given the widest publicity among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. Such notification will include

the date and time that enforcement is suspended as well as the date and time that enforcement will resume.

(2) Violations of this regulated navigation area may be reported to the COTP Sector Northern New England, at 207-767-0303 or on VHF-Channel 16.

Dated: December 22, 2011

D. A. Neptun
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

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